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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

**MEMORANDUM & ORDER**

-against-

90 CR 1019

ALEX WONG,

Defendant.

-----X  
DEARIE, Chief Judge.

Defendant, pro se, moves pursuant to Federal Rules of Civil Procedure 60(b) for relief, seeking re-sentencing consistent with United States v. Booker, 543 U.S. 220 (2005). For the reasons set forth in the government's opposition and below, relief is denied.

In 1992, following a ten-week jury trial before then District Judge Reena Raggi, defendant was convicted of various offenses for his participation in the activities of the violent Green Dragons gang and sentenced to two concurrent terms of life imprisonment and one concurrent term of ten years imprisonment. Defendant appealed, and his conviction and sentence were affirmed except with respect to a monetary fine. United States v. Wong, 40 F.3d 1347 (2d Cir. 1994). Defendant filed a motion pursuant to 28 U.S.C. § 2255 in February of 1998. The petition was dismissed on August 25, 1998. Thus, defendant's conviction became final long before Booker was issued, and Booker is inapplicable. Guzman v. United States, 404 F.3d 139, 144 (2005). ("Booker is not retroactive, *i.e.*, it does not apply to cases on collateral review where the defendant's conviction was final as of January 12, 2005, the date that Booker issued.").

In substance, defendant's Rule 60(b) motion does not attack the Section 2255 proceedings before Judge Raggi but instead challenges his underlying conviction. Thus, it constitutes another

petition for relief pursuant to 28 U.S.C. § 2255. See Gonzalez v. Crosby, 545 U.S. 524 (2005) (Rule 60(b) motion raising claim for relief from judgment of conviction constitutes another habeas corpus application). Accordingly, the claim is beyond the scope of Rule 60(b) and is denied. See Harris v. United States, 367 F.3d 74, 82 (2d Cir. 2004); Gitten v. United States, 311 F.3d 529, 534 (2d Cir. 2002).

SO ORDERED.

Dated: Brooklyn, New York  
January 13, 2010

s/ Judge Raymond J. Dearie  
RAYMOND J. DEARIE  
United States District Judge